

**EOD** JUL 27 1998

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

FILED-CLERK  
U.S. DISTRICT COURT

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TX EASTERN-BEAUMONT

IN RE NORPLANT CONTRACEPTIVE  
PRODUCTS LIABILITY LITIGATION

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§  
§

MDL No. 1038  
ALL CASES

BY

*Beverly A. Helms*

ORDER GRANTING IN PART AND DENYING IN PART WYETH'S MOTION  
TO DISMISS CLIENTS OF THE NESS MOTLEY LAW FIRM FOR  
FAILURE TO COMPLY WITH DISCOVERY REQUIREMENTS

This matter is before the court on Wyeth's Motion to Dismiss Clients of the Ness Motley Law Firm for Failure to Comply with Discovery Requirements, filed on April 27, 1998. Plaintiffs represented by the law firm of Ness, Motley, Loadholt, Richardson & Poole ("Ness Motley") filed a response to Wyeth's motion on June 16, 1998. Upon consideration of the motion, response, and applicable law, the court is of the opinion that Wyeth's motion should be GRANTED IN PART and DENIED IN PART.

DISCUSSION

On January 30, 1998, Wyeth filed a motion to compel discovery from the plaintiffs represented by Ness Motley. In its motion, Wyeth sought responses to the questions it had propounded pursuant to Practice and Procedure Order No. 5. The court heard oral argument with regard to Wyeth's motion at a case management conference on April 27, 1998. Wyeth filed a motion to dismiss the Ness Motley plaintiffs the same day. On April 30, 1998, the court granted Wyeth's motion to compel ("April Order"). Within the April Order, the court commanded approximately 4,533 plaintiffs represented by Ness Motley to comply with Defendants' discovery requests on or before June 15, 1998. *See* Order of April 30, 1998. If a plaintiff failed to comply by the June 15,

1998, deadline, the court ordered that her case would be dismissed with prejudice. *Id.*

On June 16, 1998, the Ness Motley Plaintiffs filed their response to Wyeth's motion. Within the response, Plaintiffs indicate that a portion of their number either complied with the April Order by the June 15, 1998, deadline, had already been dismissed by the court, or had previously complied with Defendants' discovery requests. *See* Ness Motley Plaintiffs' Response to Order Compelling Discovery at Ex. 2-4. Therefore, these plaintiffs contend their cases should not be dismissed by this Order. Plaintiffs response indicates that the remaining plaintiffs named in Wyeth's motion have failed to comply with the April Order. *Id.* at Ex. 1.

Based on the representations of counsel for both sides, the court ORDERS that Wyeth's motion with regard to those plaintiffs represented by Ness Motley who failed to comply with the June 15, 1998, discovery deadline established in the court's April Order is GRANTED, and these plaintiffs' cases are DISMISSED WITH PREJUDICE.<sup>1</sup> Further, the court ORDERS that Wyeth's motion with regard to those plaintiffs whose cases the court has previously dismissed is DENIED AS MOOT.<sup>2</sup> Finally, the court ORDERS that Wyeth's motion with regard to those plaintiffs who

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<sup>1</sup> For a list of plaintiffs named in Wyeth's motion who failed to comply with the June 15, 1998, discovery deadline see Ness Motley Plaintiffs' Response to Order Compelling Discovery at Exhibit 1.

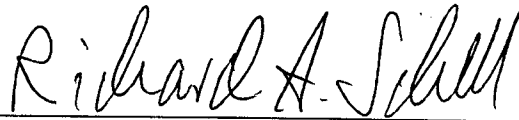
<sup>2</sup> For a list of plaintiffs named in Wyeth's motion whose cases this court has previously dismissed see Ness Motley Plaintiffs' Response to Order Compelling Discovery at Exhibit 3.

The court notes that Ness Motley Plaintiffs' response lists Plaintiff Linda Ferrian ("Ferrian") in its Exhibit 3 as a plaintiff who was previously dismissed. However, the court's docket indicates that Ferrian's case is still pending.

Wyeth's motion names Ferrian as a plaintiff who has failed to provide Defendants with any discovery responses. Plaintiffs' response to Wyeth's motion does not indicate that Ferrian has complied with Defendants' requests. Therefore, the court ORDERS that Plaintiff Linda Ferrian's case is DISMISSED WITH PREJUDICE.

have complied with the deadlines established in the court's April Order is DENIED.<sup>3</sup>

Signed this the 23<sup>rd</sup> day of July, 1998.

  
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RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE

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<sup>3</sup>For a list of plaintiffs named in Wyeth's motion who have complied with the court's April Order see Ness Motley Plaintiffs' Response to Order Compelling Discovery at Exhibits 2 and 4.